

149 FERC ¶ 61,252
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

PJM Interconnection, L.L.C.

Docket No. EL14-37-001

ORDER DENYING MOTION

(Issued December 16, 2014)

1. On August 29, 2014, the Commission instituted an investigation pursuant to section 206 of the Federal Power Act (FPA),¹ into whether PJM Interconnection, L.L.C.'s (PJM) application of the Financial Transmission Rights (FTR) forfeiture rule (FTR forfeiture rule) in section 5.2.1 (c) of its Open Access Transmission Tariff (Tariff) to Up-to-Congestion transactions (UTCs) was just and reasonable and to examine how uplift is, or should be, allocated to all virtual transactions in PJM.² Pursuant to section 206 (b) of the FPA, the August 29, 2014 Order established a refund effective date of September 8, 2014.
2. On September 24, 2014, the Financial Marketers Coalition (Financial Marketers) filed a Motion for Clarification and Request for Expedited Consideration (Motion) asking the Commission to clarify that it did not intend to apply the refund effective date to its investigation of potential uplift allocations to UTC transactions, but only to its investigation into the application of the FTR forfeiture rule. As discussed below, the Commission denies the Motion.

¹ 16 U.S.C. § 824e (2012).

² *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,144 (2014) (August 29, 2014 Order). The Commission directed staff to hold a technical conference to explore these issues with interested parties. Pursuant to the Notice of Technical Conference issued October 31, 2014, the technical conference will be held at the Commission on January 7, 2015.

I. Background

3. On June 10, 2013, PJM filed revisions in Docket No. ER13-1654-000 to its Tariff and Amended and Restated Operating Agreement to define UTC transactions as virtual transactions and clarify the rules concerning the use of such transactions. On August 9, 2013, the Commission accepted PJM's proposal on condition that PJM submit a compliance filing explaining how PJM intended to apply the FTR forfeiture rule in section 5.2.1 (c) of its Tariff to UTC transactions.³ The Commission required PJM to explain whether and how its treatment of UTC transactions differs from the treatment accorded to two other types of virtual transactions, Increment Offers (INCs) and Decrement Bids (DECs),⁴ and, if so, to explain the different approach and rationale for UTC transactions. The Commission also required PJM to make an informational filing describing the financial performance of UTC transactions, INCs, and DEC as well as their effects on uplift. In addition to the compliance and informational filings, PJM subsequently submitted responses to a December 18, 2013 staff data request in Docket No. ER13-1654-001 concerning the FTR forfeiture rule.

4. In its August 29, 2014 Order instituting a section 206 investigation, the Commission found that PJM's filings raised, but did not resolve, issues concerning its proposed treatment of UTCs as virtual transactions. The Commission concluded that the information provided to date was insufficient to determine whether differences existed between UTC transactions and INCs/DECs which would justify a difference in the application of the FTR forfeiture rule, or to determine whether the current forfeiture rule continued to be just and reasonable when applied to INCs, DEC, and UTCs. With regard to uplift, the Commission noted that in its informational uplift filing, PJM stated that both INCs and DEC and UTC transactions affect uplift; however, only INCs and DEC are currently subject to uplift charges. Accordingly, the Commission instituted a section 206 investigation to address whether the way PJM's current tariff applies the FTR forfeiture rule to UTCs is just and reasonable.⁵ Further, as relevant here, in P 13 of the August 29, 2014 Order, the Commission stated that "[s]ince PJM now proposes to treat UTCs as virtual transactions, this section 206 proceeding should also examine how uplift is, or should be, allocated to all virtual transactions. . . . [O]ur review of PJM's informational filing on uplift indicates that an examination of how uplift is allocated to all

³ *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,121 (2013).

⁴ An INC is a virtual offer to sell energy at a specified source bus in the PJM Day-ahead market. A DEC is a virtual bid to purchase energy at a specified sink bus in the PJM Day-ahead market. See *PJM Interconnection, L.L.C.*, Docket No. ER13-1654-001, September 6, 2013 compliance filing (Compliance Filing) at 14.

⁵ August 29, 2014 Order, 148 FERC ¶ 61,144 at P 2.

virtual transactions is warranted.” Pursuant to the requirements of section 206 (b), the August 29, 2014 Order established a refund effective date to coincide with the date of publication of notice of the section 206 proceeding in the *Federal Register*, which was September 8, 2014.⁶

II. Financial Marketers’ Motion

5. On September 24, 2014, Financial Marketers filed a Motion for Clarification and Request for Expedited Consideration.⁷ Financial Marketers assert that the refund effective date should only apply to the applicability of the FTR forfeiture rule to UTC transactions and urge the Commission to expeditiously issue an order clarifying that it did not intend to apply the refund effective date to potential uplift allocations to UTCs. Financial Marketers state that, based on paragraph 13 of the August 29, 2014 Order, market participants have been unable to determine whether potential refunds apply only to the application of the FTR forfeiture rule or to both the FTR forfeiture rule and potential uplift allocations.⁸

6. Financial Marketers contend that this lack of clarity has caused significant uncertainty in the PJM market and that many trading entities have left the PJM market or suspended their trading operations. Financial Marketers state that financial market participants trading UTCs in PJM have experienced harm and financial losses as a result of the refund effective date. Financial Marketers allege that numerous trading entities have exited the PJM market due to the potential risk of a future uplift allocation without any way of estimating what that allocation may be.⁹

III. Responsive Pleadings

7. On September 26, 2014, a notice was issued shortening the time to answer the Motion to and including October 6, 2014. On October 6, 2014, the independent market monitor for PJM, Monitoring Analytics, LLC, (Market Monitor) and Inertia Power I, LLC and Twin Cities Power Holdings, LLC (Inertia/Twin Cities) filed answers. The Market Monitor states that the August 29, 2014 Order plainly sets the issue of allocation of uplift to UTC transactions for investigation, establishes a refund effective date, and

⁶ *Id.* P 15.

⁷ Financial Marketers’ Motion has been treated as a Request for Rehearing. A tolling order was issued on October 22, 2014.

⁸ Financial Marketers Motion at 9.

⁹ Financial Marketers Motion at 4.

needs no further clarification. Inertia/Twin Cities support the Motion and echo Financial Marketers' arguments. On October 21, 2014, Financial Marketers filed a Motion for Leave to Answer and Answer.¹⁰ In its answer, Financial Marketers reiterate the arguments set forth in their motion.

IV. Discussion

A. Procedural Matters

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept Financial Marketers' answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

9. We deny Financial Marketers' Motion. The August 29, 2014 Order instituted a section 206 investigation into both the application of PJM's FTR Forfeiture Rule to UTCs and the potential allocation of uplift to virtual transactions in PJM.¹¹ The order established a refund effective date applicable to the entire section 206 proceeding.¹² This is consistent with the requirements of section 206(b) of the FPA, which requires that "[w]henever the Commission institutes a proceeding under this section [206], the Commission shall establish a refund effective date."¹³ While Financial Marketers assert that trading entities may have left the PJM market or suspended their trading operations due to the uncertainty regarding the allocation of uplift to UTCs, the statute does not give the Commission discretion to establish a refund effective date for only part of a section 206 investigation. To the extent Financial Marketers challenge whether the Commission should direct refunds relevant to uplift allocation, those arguments are premature. The August 29, 2014 Order established a refund effective date for the entire proceeding, but the Commission will determine whether refunds are, in fact, appropriate or not at a later

¹⁰ The Market Monitor also filed a Motion for Leave to Answer and Answer on October 21, 2014; however, its comments supported FirstEnergy Company's September 29, 2014 motion to intervene and comments and did not further address the refund effective date.

¹¹ August 29, 2014 Order, 148 FERC ¶ 61,144 at P 13.

¹² *Id.* P 15.

¹³ 16 U.S.C. § 824e (2012).

date following the close of the record. We note that a technical conference will be held at the Commission on January 7, 2015 to examine how uplift is allocated to all virtual transactions in PJM, and that the Commission intends to render a decision in this proceeding as expeditiously as possible.¹⁴

The Commission orders:

Financial Marketers' Motion for Clarification is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁴ As we previously noted, we expect that we should be able to render a decision within five months of the submission of post-technical conference pleadings. August 29, 2014 Order, 148 FERC ¶ 61,144 at P 16.